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in opinion

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January 7, 1958

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Lawton B. Chandler, Secretary
State Tax Commission
State House
Concord, New Hampshire

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CONCORD, N.H.

Dear Mr. Chandler:

In a letter of December 17, 1957, you noted that following the decision in Public Service Company v. The State of New Hampshire (Supreme Court, November 26, 1957) rehearings under the provisions of RSA 83:9 were had with respect to the assessment of the franchise tax against several taxpayers in the years 1955 and 1956; and that it was determined that the taxpayers are entitled to a refund of the amounts paid by them on account of such years. In directing the refunds you inquire of us if you should add interest from the time when the tax was paid to the date when the refund is to be made.

We answer in the negative.

The authority of the Commission to direct a refund of taxes improperly or illegally collected is found in RSA 83:13. The language of the statute is unequivocal. Following certification of the fact of overpayment, it is the duty of the Treasurer to refund to the taxpayer

"the amount of any overpayment of the tax . . ."

There is, thus, no authority in your Commission to certify to the Treasurer, nor in the Treasurer to pay, any amount in excess of the overpayment.

We have carefully considered the legal authorities referred to by counsel for the taxpayers in their Memorandum of Law dated December 12, 1957; but we find nothing in them empowering the Commission to direct a refund of any sum greater than the amount of the tax abated.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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